

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3(1)“b,” 16.5(1)“r,” and 16.5(1)“m,” the Iowa Finance Authority hereby amends Chapter 39, “HOME Partnership Program,” Iowa Administrative Code.

The purpose of these amendments is to revise the rules to more fully take advantage of opportunities allowed under federal law to better benefit low-income housing in the state of Iowa.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 27, 2011, as **ARC 9644B**. The Authority received public comment on the proposed amendments. In response to the public comment received, the Authority has made the following changes to the amendments as published under Notice: The definition of “developer” in rule 265—39.2(16) was revised to state those things to which the development process applies; the definition of “subrecipient” was revised to state that the term includes a state recipient pursuant to 24 CFR 92.201(b)(2) and to clarify that eligible activities to be administered by a subrecipient are tenant-based rental assistance and home ownership assistance without development subsidies; the proposed changes in subrule 39.4(1), introductory paragraph, that would have limited eligible activities in the case of rental housing rehabilitation (including conversion and preservation) or rental housing new construction to projects involving five or more units were not adopted; and the amendment to subrule 39.9(4) was expanded to provide that IFA shall retain up to 10 percent of the HOME funds for development subsidies from payment to the developer until 30 days after the recipient satisfactorily completes the work and full occupancy of the HOME-assisted units is attained, and that, at IFA’s discretion, up to 5 percent of the HOME funds for home buyer and tenant-based rental assistance activities may be retained from payment to the subrecipient for program or administrative costs until the final closeout documents are submitted to and approved by IFA.

In addition, subparagraph 39.4(1)“a”(3), which is amended in this rule making to add the words “with net proceeds” to the last sentence of the subparagraph, is also amended in an Adopted and Filed Emergency rule making published herein as **ARC 9802B**. In **ARC 9802B**, subparagraph 39.4(1)“a”(3) is amended to temporarily adjust the base home purchase price eligibility limits. That amendment became effective on September 16, 2011. The amendment in **ARC 9802B** and the amendment to subparagraph 39.4(1)“a”(3) in this rule making have been simultaneously incorporated into the Iowa Administrative Code.

The Iowa Finance Authority adopted these amendments on September 7, 2011.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 16.5(1)“m” and 42 U.S.C. Sections 12701 et seq.

These amendments will become effective on November 9, 2011.

The following amendments are adopted.

ITEM 1. Adopt the following new definitions in rule **265—39.2(16)**:

“*Developer*” means any individual or entity responsible for initiating and controlling the development process and ensuring that all phases of the development process, or any material portion thereof, are accomplished. The development process applies to transitional housing, rental housing, rehabilitation, rental housing new construction, and homeowner assistance with development subsidies.

“*IDIS*” means the HUD Integrated Disbursement and Information System.

“*Subrecipient*” means a public agency or nonprofit organization selected by IFA to administer all or a portion of an activity under the HOME program. “Subrecipient” includes a state recipient pursuant to 24 CFR 92.201(b)(2). A public agency or nonprofit organization that receives HOME funds as a developer or owner of housing is not a subrecipient. The selection of a subrecipient by IFA is not subject to the procurement procedures and requirements under federal or state law. Eligible activities to be administered by a subrecipient are tenant-based rental assistance and home ownership assistance without development subsidies.

ITEM 2. Amend rule ~~265—39.2(16)~~, definition of “CHDO,” as follows:
“CHDO” means a community housing development organization, which is a nonprofit organization registered with the Iowa secretary of state and certified as such by ~~IDED~~ or IFA, pursuant to 24 CFR 92.2 (April 1, 1997).

ITEM 3. Rescind the definition of “IDED” in rule ~~265—39.2(16)~~.

ITEM 4. Amend rule ~~265—39.4(16)~~ as follows:

~~265—39.4(16) Eligible activities and forms of assistance.~~

~~39.4(1) Eligible activities include transitional housing, tenant-based rental assistance, rental housing rehabilitation (including conversion and preservation), rental housing new construction, home ownership assistance that includes some form of direct subsidy to the home buyer (including development subsidies), and other housing-related activities as may be deemed appropriate by IFA. Assisted housing may be single-family housing or multifamily housing and may be designed for occupancy by homeowners or tenants.~~

~~a. Assisted units shall be affordable.~~

~~(1) and (2) No change.~~

~~(3) For home ownership assistance, the initial purchase price for newly constructed units or the after rehabilitation value for rehabilitated units shall not exceed 95 percent of the median purchase price as established by HUD mortgage limits for the same type of single-family housing in the area. Assisted units shall remain affordable through recapture with net proceeds or resale provisions for a specified period: 5 years for projects receiving less than \$15,000 in assistance per unit; 10 years for projects receiving \$15,000 to \$40,000 in assistance per unit; and 15 years for projects receiving over \$40,000 in assistance per unit.~~

~~b. to d. No change.~~

~~39.4(2) and 39.4(3) No change.~~

~~39.4(4) Program income must be returned to IFA except in the following instances:~~

~~a. Subrecipients who receive program income shall reduce the HOME draw amount requested by the amount of program income received and must report to IFA the amount and source of the program income.~~

~~b. CHDOs that have an IFA-approved reuse plan and a written agreement that specifies that program income may be retained by the CHDO may use program income as CHDO proceeds.~~

ITEM 5. Amend rule ~~265—39.6(16)~~ as follows:

~~265—39.6(16) Application requirements.~~ To be considered for HOME assistance, an application shall meet the following threshold criteria.

~~39.6(1) No change.~~

~~39.6(2) The application shall document the applicant’s capacity to administer the proposed activity. Such documentation may include evidence of successful administration of prior housing activities. IFA reserves the right sole discretion to deny funding to an applicant that has failed to comply with federal or state requirements in the administration of a previous project funded by the state of Iowa or that failed to comply with federal requirements in the administration of a previous project funded in any other state. Documentation of the ability of the applicant to provide technical services and the availability of certified lead professionals and contractors either trained in safe work practices or certified as abatement contractors may also be required as applicable to the HOME fund activity.~~

~~39.6(3) to 39.6(6) No change.~~

~~39.6(7) Local participating jurisdiction requirement. An application for a project located in a locally designated participating jurisdiction (PJ) must show evidence of a financial commitment from the local PJ at least equal to 25 percent of the total IFA HOME funds requested. Sources of local PJ financial commitment may include one or more of the following: HOME, community development block grant, tax increment financing, tax abatement, or general funds; the value of waived taxes, fees or charges associated with HOME projects; the value of donated land or real property; the cost of infrastructure~~

~~improvements associated with HOME projects; and the contracted commitment to provide the direct costs of supportive services to residents of HOME projects provided by a city-owned agency using nonfederal funds.~~ Maximum per-unit subsidy amount and subsidy layering. The following shall apply to all applications:

a. The total amount of HOME funds awarded on a per-unit basis may not exceed the per-unit dollar limitations established under Section 221(d)(3)(ii) of the National Housing Act (12 U.S.C. 17151(d)(3)(ii)) for elevator-type projects that apply to the area in which the housing is located.

b. IFA shall evaluate the project in accordance with subsidy layering guidelines adopted for this purpose.

c. The total amount of HOME funds awarded on a per-unit basis cannot exceed the pro rata or fair share of the total project costs when compared to a similar unit in a rental activity.

39.6(8) An application for a home ownership assistance activity must indicate that recipients will require the beneficiaries of the applicant's home ownership assistance activity to use a principal mortgage loan product that meets the following criteria:

a. No change.

b. The HOME assistance must be recorded in second lien position to the principal mortgage loan, if one exists. Recipients of HOME ~~fund~~ home ownership assistance activities must maintain their assistance security agreements in the above-stated recording position throughout the applicable period of affordability and will not be allowed to subordinate the required recording position to any other form of assistance, such as home equity loans. A home buyer search is required, and any collection/unpaid obligation that would become a judgment or any judgments must be paid in full prior to closing.

c. and d. No change.

39.6(9) An application for a home ownership assistance activity must stipulate that home ownership assistance is for first-time home buyers only and that the assisted unit will remain as the assisted home buyer's principal residence throughout the required period of affordability, which must be verified annually by the subrecipient. If the assisted home buyer fails to maintain the home as the principal residence during the affordability period, then all HOME funds associated with that address must be repaid to IFA.

39.6(10) An application for a home ownership assistance activity must stipulate that all assisted units will be insured for at least the full value of the assisted unit, which must be verified annually by the subrecipient.

ITEM 6. Amend rule 265—39.8(16) as follows:

265—39.8(16) Allocation of funds.

39.8(1) to 39.8(3) No change.

39.8(4) ~~Reserved.~~ Not more than 5 percent of the state's annual HOME allocation may be reserved for CHDO operating expenses.

39.8(5) No change.

39.8(6) Awards shall be limited to no more than ~~\$500,000~~ \$600,000 for all single-family activities assisting ~~homeowners~~ or home buyers. Awards shall be limited to no more than ~~\$900,000~~ \$1,000,000 for all multifamily rental activities.

39.8(7) Single-family per unit subsidies.

a. and b. No change.

c. Assistance for single-family activities providing development subsidies for newly constructed housing is limited to ~~\$20,000~~ \$30,000 per unit. Development subsidies ~~may~~ shall only be provided in addition to ~~acquisition~~ direct subsidies within home buyer assistance activities. When a development subsidy is used in combination with home buyer assistance activities, assistance is limited to \$35,000 per unit, inclusive of all costs.

39.8(8) Multifamily per unit subsidies. The maximum per unit HOME funds subsidy for all multifamily activities is ~~\$60,000~~ \$70,000 per unit including both newly constructed units and the rehabilitation of existing multifamily units, including conversion activities. The ~~\$60,000~~ \$70,000 per unit multifamily limit includes all applicable costs including, but not limited to, hard costs of

construction or rehabilitation; architectural design or technical services costs; lead hazard reduction or abatement costs; lead hazard reduction or abatement carrying costs; and temporary relocation.

39.8(9) Recipients Subrecipients shall identify general administrative costs in the HOME funds application. IFA reserves the right to negotiate the amount of funds provided for general administration, but in no case shall the amount for general administration exceed 10 percent of a total HOME funds award. Only local government and nonprofit recipients are eligible for general administrative funds. Subrecipients must certify that all general administrative costs reimbursed by HOME funds are separate from and not reimbursed by HOME funds as technical services costs.

39.8(10) and 39.8(11) No change.

ITEM 7. Amend rule 265—39.9(16) as follows:

265—39.9(16) Administration of awards. Applicants selected to receive HOME funds awards shall be notified by letter from the IFA executive director or IFA affordable rental production division director.

39.9(1) Preaudit survey. ~~A preaudit survey may be required for all for profit and nonprofit direct recipients for assistance that exceeds \$150,000.~~

39.9(2) Contract. A contract shall be executed between the recipient and IFA. These rules, the approved application, the IFA HOME Management Program Guide for the specified activity and all applicable federal and state laws and regulations shall be part of the contract.

a. to e. No change.

39.9(3) Local administrative and technical services contracts.

a. ~~Recipients Subrecipients awarded funds for general administration that employ the services of a third-party administrator to perform all or part of the general administrative functions for the recipient shall enter into a contractual agreement for the general administrative functions to be performed to perform the general administrative functions for home ownership assistance and tenant-based rental assistance activities shall enter into a contract for services with IFA.~~

b. Recipients awarded funds for activities requiring technical services (e.g., inspections, work write-ups, cost estimates, construction supervision, lead hazard reduction need determination and oversight, lead hazard reduction carrying costs, and temporary relocation coordination) that employ a third-party entity to perform all or part of the technical services shall enter into a contractual agreement for the technical services to be performed. The procurement must follow 24 CFR Part 84 and 24 CFR Part 85, when necessitated by those regulations.

e. ~~Recipients that employ a third party to perform all or part of the general administration for the recipient and that also employ a third party to perform all or part of the technical services for the recipient shall conduct separate procurement transactions and shall enter into separate contractual agreements for each: one contract for general administration and one contract for technical services. Separate contracts are required even if both functions are performed by the same third party entity.~~

39.9(4) Requests for funds. Recipients shall submit requests for funds in the manner and on forms prescribed by IFA. Individual requests for funds shall be made in whole dollar amounts equal to or greater than \$500 per request, except for the final draw of funds. Adequate and itemized documentation supporting the amount of funds requested must be provided and approved by IFA prior to release of funds. IFA shall retain up to 10 percent of the HOME funds for development subsidies from payment to the recipient until 30 days after the recipient satisfactorily completes the work and full occupancy of the HOME-assisted units is attained. At IFA's discretion, up to 5 percent of the HOME funds for home buyer and tenant-based rental assistance activities may be retained from payment to the subrecipient for program or administrative costs until the final closeout documents are submitted to and approved by IFA.

39.9(5) Record keeping and retention.

a. No change.

b. Representatives of IFA, HUD, the Inspector General, the General Accounting Office and the state auditor's office shall have access to all records belonging to or in use by recipients and subrecipients pertaining to a HOME funds award; to the total project receipts and expenditures related to new construction, acquisition, or rehabilitation; and to any records maintained by third-party administrators

for general administration or technical services for the HOME-funded project. IFA reserves the right to demand any and all additional records and documents that may relate to the HOME award.

39.9(6) and 39.9(7) No change.

39.9(8) ~~Contract~~ Work completion closeout. Upon the contract expiration date or work completion date, as applicable, and IFA's receipt of final draw and completion documentation, IFA shall initiate closeout procedures in IDIS. Recipients shall comply with applicable audit requirements, ~~quarterly~~ performance reports and Section 3 requirements and provide other required documents described in the HOME funds application, the contract, the IFA HOME ~~Management~~ Program Guide, and any other IFA HOME partnership program policies and procedures.

39.9(9) to 39.9(11) No change.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/5/11.